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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: CCO - 203332

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on October 3, 2021, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA regarding Child Care (CC), a hearing was held on November 10, 2021, by telephone.

The issue for determination is whether the agency correctly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$38,476.82 for the period of

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 West Washington Avenue  
Madison, WI 53703

By: Attorney [REDACTED]

Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On January 19, 2018, the Petitioner purchased a home at [REDACTED] and is currently residing there. See Exhibit R-44. Previously, she resided at [REDACTED] with [REDACTED]. The Petitioner and [REDACTED] have a child in common. See Exhibit R-49.
3. On March 23, 2018, the child care agency issued a summary to the Petitioner with an address of [REDACTED]. The Petitioner updated her address with the agency to [REDACTED]. On September 17, 2018, October 31, 2019, March 10, 2020, and November 9, 2020, the agency issued summaries of the information reported by the Petitioner to her and requested that she contact the agency to report any inaccurate information. Her address was reported as [REDACTED] for all those applications/renewals. She repeatedly reported [REDACTED] as an absent father. See Exhibit R-32.
4. On June 22, 2018, October 30, 2018, November 5, 2018, November 4, 2019, and November 9, 2020, the agency issued Notices of Eligibility to the Petitioner informing her that she was eligible for child care benefits for her children. The notices informed her that eligibility was determined based on a household composition that included herself and her children and her reported earned income from [REDACTED], [REDACTED], [REDACTED], [REDACTED], and unemployment compensation. The notices further informed her of the requirement to report any changes that could affect her eligibility to the agency within 10 days. See Exhibits R-21, 22, 23, 24, and 25.
5. On June 4, 2018, June 22, 2018, November 21, 2018, December 24, 2018, March 22, 2019, May 31, 2019, August 21, 2019, November 6, 2019, March 20, 2020, March 24, 2020, November 10, 2020, and May 21, 2021, the agency issued Authorization Notices to the Petitioner informing her of the authorizations she had for child care benefits. The notices further informed her of the requirement to report any changes that could impact her eligibility to the agency including changes in household composition and income. See Exhibits R-28, 29, 30, and 31.
6. On May 19, 2021, the Petitioner contacted the child care agency to inquire whether she could add the granddaughter of her boyfriend ([REDACTED]) to her case for the summer. She reported [REDACTED] is a truck driver and has joint custody of his granddaughter with her grandmother. The Petitioner stated that she did not want to add [REDACTED] to her case because he made too much money. The worker advised her that [REDACTED] would need to be added to the case if she wanted his daughter on the case. The Petitioner requested to speak with a supervisor. See Exhibit R-19.
7. On May 19, 2021, an agency supervisor contacted the Petitioner. During the call, the Petitioner referred to [REDACTED] as “my fiancée” and “my boyfriend.” She stated that he “stays with me” and that he’s not always there because he’s on the road for work. She stated again that when he is in town, he stays with her. The supervisor informed the Petitioner that [REDACTED] would need to be added to her case if she wanted his granddaughter on her case. The Petitioner stated that he made too much and did not want him added to the case. See Exhibits R-19 and 57.
8. On May 24, 2021, the agency commenced an investigation regarding the Petitioner’s household composition. See Exhibit R-20.
9. On May 24, 2021, the agency obtained a signed statement from [REDACTED]’ brother, [REDACTED] that [REDACTED] resides at [REDACTED] “when he is in town from work.” The agency also obtained a signed statement from [REDACTED]’ cousin, [REDACTED], that [REDACTED] resides “periodically” at [REDACTED]. See Exhibit R-42.

10. [REDACTED] registered three vehicles reporting an address of [REDACTED] in February 2021, March 2021. and April 2021: a 2007 Chevrolet Impala, a 2007 GMC Yukon Denali, and a 1984 Chevrolet Monte Carlo. See Exhibit R-43.
11. On May 25, 2021, the agency issued a Notice of Eligibility to the Petitioner informing her that she was eligible for child care benefits for her children. The notice informed her that this was based on a household composition of five that included herself, [REDACTED], and three children. It also informed her that the determination was based on reported household income of \$7406.75 for her earned income from [REDACTED] and [REDACTED]' earned income from [REDACTED]. The notice informed her of the requirement to report to the agency within 10 days if her gross monthly household income exceeded \$7656.75. See Exhibit R-26.
12. [REDACTED] and the Petitioner reported their current address of [REDACTED] for their voter registrations. [REDACTED] voted in the November 2020 election reporting an address of [REDACTED]. See Exhibit R-45.
13. The agency obtained employment information for [REDACTED] which reflects that he was employed with Alpha Technologies from October 2017 – May 2021. He reported his address to his employer as [REDACTED]. See Exhibits R-37, 28, 39, 40 and 41.
14. On June 10, 2021, the Petitioner contacted the agency to discuss the status of her case. She was informed that the case is pended for verification of [REDACTED] income. Petitioner reported that [REDACTED] does not reside in her household. Petitioner was informed that, based on the agency's investigation, [REDACTED] must remain on her case. See Exhibit R-19.
15. On September 27 and 28, 2021, the agency issued Child Care Overpayment Notices to the Petitioner informing her that it had determined the Petitioner received overissuances of child care benefits due to an IPV and misrepresentation of household composition and income. The following claims were established:
 

|                    |                               |             |
|--------------------|-------------------------------|-------------|
| Claim # [REDACTED] | June 1, 2018 – May 31, 2019   | \$17,846.73 |
| Claim # [REDACTED] | June 1, 2019 – April 30, 2020 | \$14,759.19 |
| Claim # [REDACTED] | Dec 1, 2020 – May 31, 2021    | \$ 5,870.90 |

See Exhibits R-2 – R-18.
16. On September 29, 2021, the DCF issued a Notice of Intentional Program Violation and Penalty to the Petitioner informing her that the DCF had determined she intentionally violated regulations of the Wisconsin Shares Child Care assistance program when she intentionally misrepresented household composition. The notice informed her that the DCF was seeking to disqualify her from receiving child care benefits under the program for a period of six months. See Exhibit R-1.
17. On October 6, 2021, the Petitioner filed an appeal with the Division of Hearings and Appeals.
18. On October 11, 2021, the agency issued a Notice of Eligibility to the Petitioner informing her that her child care authorizations would end effective October 31, 2021 due to the agency's finding of an intentional program violation.
19. On December 10, 2021, the DHA issued a decision upholding the DCF's Intentional Program Violation. See DHA Case No. ML-21-0359.
20. On January 3, 2022, the Petitioner submitted a rehearing request for Case No. ML-21-0359. On January 19, 2022, the DHA denied the Petitioner's request for a rehearing.

## DISCUSSION

The DCF must recover all overpayments of Child Care Benefits regardless of who is at fault. Wis. Stat. § 49.195(3); Wis. Admin. Code, § DCF 101.23(1)(g). Child care benefits are provided to eligible participants who are working in unsubsidized employment or some other approved activity. Wis. Stat. § 49.155(1m)(a). Clients must report any change of circumstances that may affect eligibility for benefits within 10 days. Wisconsin Shares Child Care Subsidy Policy Manual, § 1.8.1. Changes that must be reported included household composition and increased or decreased income. Id.

Overpayments are issued when a client received benefits for which they were not eligible. Overpayments may be a result of administrative errors that affect eligibility, client errors, and/or client Intentional Program Violations (IPV). Manual, § 4.5.2. The DCF and local agencies must take all reasonable steps to recover any overpayment made due to administrative error that affects eligibility, client error, or intentional program violation, as established in Wis. Admin. Code DCF s. 201.04(5)(a), when the client was not eligible for the level of subsidy received. Id. The client is liable for all overpayments and sanctions described in Section 4.5 (see Wis. Admin. Code DCF s. 101.23(1) (g)). Id.

Claims for incorrect payments due to an intentional program violation (IPV) or client error may be established for up to six (6) years prior to the notification date of the overpayment, also known as the date of discovery (see Wis. Stat. s. 893.43). Manual, §§ 4.5.2.1 and 4.5.4.3. If a client has presented incorrect information, fraudulent documentation, or withheld information at application or review, and the client was not eligible for the level of subsidy received, the overpayment begins on the first day of the authorization and the ends on the last day of the current month. Manual, § 4.5.2.2.1.1.1.

The DCF alleges that the Petitioner committed an IPV by failing to report that [REDACTED] lived in her household. It further alleges that she repeatedly failed to report his income which would have put the household over the income limit to receive benefits. The burden of proof rests with the DCF in this case. Based on the intentional program violations and the failure to report accurate household composition and income, the DCF seeks to recover all child care benefits issued to the Petitioner for the overpayment periods.

The DCF presented evidence that includes notices it issued to the Petitioner, case comments, the audio recording of the Petitioner's phone call with Milwaukee Early Childcare Agency (MECA), [REDACTED], pay statements, driver's license information, vehicle registration information, voter registration and records, property records, and testimony of its investigator. This evidence is noted in the Findings of Fact above. The DCF alleges that its evidence establishes that the Petitioner and [REDACTED] resided together at [REDACTED] and at [REDACTED] and that the Petitioner never reported to the child care agency that [REDACTED] was part of her household. The DCF investigator testified that she spoke to [REDACTED] employer who stated that he has occasional work assignments that require overnight travel, but he is not consistently working out-of-town. The DCF alleges that, if [REDACTED] had been included in her household, the Petitioner would not have been eligible for child care benefits.

The Petitioner testified on her own behalf and presented the testimony of [REDACTED]. Both testified that they did reside together for a time at [REDACTED] but they have never resided together at [REDACTED]. Both concede that [REDACTED] uses the Petitioner's address for mailing purposes. [REDACTED] testified that he continues to use the Petitioner's mailing address because they are good friends, and he does not want his family members to know his business. He testified that he registered to vote with the Petitioner's address because that is his mailing address. He also testified that he travels for work Monday – Friday most weeks and is only in Milwaukee on the weekends. He stated that, when he is in Milwaukee, he stays with his brother, cousin, or other relatives. [REDACTED] testified that the only vehicle he currently

owns is the Chevrolet Monte Carlo. He stated he was uncertain why it was registered to the Petitioner's address and believed it had been registered to his son's address. He noted that the 2007 GMC Yukon was jointly owned by him and the Petitioner, but it is now her vehicle. He further testified that the 2007 Impala is his son's vehicle, and he doesn't know why that vehicle is registered to the Petitioner's address. The Petitioner testified that she was aware that [REDACTED] was using her address as his mailing address. She said that the child support agency was aware of this as well.

Based on the evidence submitted, I conclude the DCF has met its burden of proving by a preponderance of the evidence that [REDACTED] was residing at [REDACTED] and the Petitioner intentionally failed to report accurate household composition and income to receive child care benefits. The DCF concedes that a benefits recipient can allow an individual to use her address for mailing purposes. However, the evidence establishes that [REDACTED] did not use the Petitioner's address just for mailing purposes. He used it to register his vehicles and, more importantly, for voting purposes. To register to vote in Wisconsin, a voter must provide proof of residence, defined as "the place where the person's habitation is fixed, without any present intent to move, and to which, when absent, the person intends to return." See Wis. Stat. § 6.10(1). To register to vote, [REDACTED] had to provide proof that [REDACTED] was his place of residence. In addition, the Petitioner's testimony regarding [REDACTED] residence is inconsistent with her statements made during the audio recording submitted by DCF. The Petitioner clearly stated in the recorded phone call that she is in a relationship with [REDACTED] and that he stays with her when he is in Milwaukee. Because the DCF has provided evidence to establish that [REDACTED] was [REDACTED] residence, I conclude it has met its burden to demonstrate that the Petitioner intentionally failed to report accurate household composition and income to receive child care benefits.

The DCF presented evidence of [REDACTED] income which demonstrates that the household income exceeded the income limit for the subsidy program. The Petitioner was not entitled to receive child care benefits and the DCF is authorized to recover the benefits she was not entitled to receive. The DCF presented evidence of the child care benefits the Petitioner received during the overpayment periods. Based on all the evidence, I conclude the DCF is authorized to recover an overpayment of child care benefits from the Petitioner in the total amount of \$38,476.82 for the periods of June 1, 2018 – April 30, 2020 and December 1, 2020 – May 31, 2021.

### CONCLUSIONS OF LAW

The DCF is authorized to recover an overissuance of child care benefits from the Petitioner for the following claims:

|                    |             |
|--------------------|-------------|
| Claim # [REDACTED] | \$17,846.73 |
| Claim # [REDACTED] | \$14,759.19 |
| Claim # [REDACTED] | \$ 5,870.90 |

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way 5<sup>th</sup> Floor, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important, or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

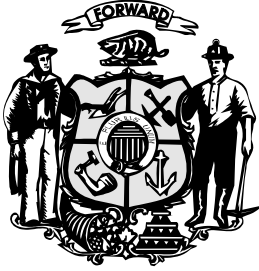
## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 West Washington Avenue, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 24th day of January, 2022

\s \_\_\_\_\_  
Debra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on January 24, 2022.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud  
Attorney [REDACTED]